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SPECIAL PROGRAMS OFFICE  
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In re Application of  
Carol Rines, et al.  
Application No. 09/039,176  
Filed: 13 March, 1998  
Attorney Docket No.: (None)

ON PETITION

This is a decision on the petition, pled erroneously under 37 C.F.R. §1.316,<sup>1</sup> for revival of the application at issue, filed 4 April and supplemented on 2 May, 2000, under the provisions of 37 C.F.R. §1.137(b).<sup>2</sup> (Petitioner's proper grounds for revival herein are under the provisions of 37 C.F.R. §1.137(b).<sup>3</sup>)

The petition under 37 C.F.R. §1.137(b) is **GRANTED**; the petition under 37 C.F.R. §1.316(c) is **DISMISSED** as moot.

The record reflects that:

- Petitioner failed to respond properly and timely to a final Office action mailed 17 August, 1999, in response to Petitioner's communication of 4 June;
- the instant application went abandoned at midnight on 17 November, 1999;
- no Notice of Abandonment was mailed;
- contemporaneously with the petition filed 4 April, Counsel filed a Continued Prosecution Application (CPA), one of the proper responses to a final rejection.

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<sup>1</sup> Petitioner may be unaware that the Code of Federal Regulations, 37 C.F.R. Part I, and in particular 37 C.F.R. §1.316 was revised more than two (2) years before the instant filing. See: 62 Fed. Reg. 53131, 10 October, 1997, effective 1 December, 1997.

<sup>2</sup> Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

<sup>3</sup> As authorized by Petitioner, the petition fee under 37 C.F.R. §1.137(b) and §1.17(m) (\$605.00—small entity) and the CPA fee under §1.53(d) and §1.16(a) (\$345.00—small entity) are charged to and the terminal disclaimer fee §1.20(d) (\$110.00—mispaid at the large entity rate instead of the small) is credited to Deposit Account 18-1425.

This application was filed on 13 March, 1998, but claims benefit as a continuation linked to Application No. 07/584,134, filed 18 September, 1990. The Terminal Disclaimer is waived, *sua sponte*.

This application is being revived for the purpose of copendency with the continued prosecution application (CPA) filed contemporaneously with the petition herein on 4 April, 2000, and thereafter is expressly abandoned. In addition, this application is being forwarded to the Office of Initial Patent Examination for the processing of the CPA.

Telephone inquiries should be directed to Petitions Attorney John J. Gillon, Jr., at (703) 305-9199.



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